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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 566

CHARLES R. PIERCE, JULIAN EATON AND HAYFORD O. ENWALL, AS DIRECTORS AND TRUSTEES OF ROYAL CITRUS GROVES COMPANY, A DISSOLVED FLORIDA CORPORATION, ET AL.,
Petitioners,

vs.

FULLER WARREN, GOVERNOR, NATHAN MAYO, COMMISSIONER OF AGRICULTURE, ET AL.,
Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

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Opinion Below

The opinion of the Supreme Court of Florida (R. 37-41) is reported in 42 So. 2d 857. (Not yet reported in official Florida Reports.)

Jurisdiction

The Supreme Court is without jurisdiction to review the decision of the Supreme Court of Florida. The validity of no treaty or statute is drawn in question nor is any title,

right, privilege or immunity set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States, as is required by 28 USC Sec. 1257, for the Court to be vested with jurisdiction to review the case.

No federal question was raised by the pleadings nor at the trial. The assignment of error on the appeal to the Supreme Court of Florida (R. 32) did not raise any federal question. Neither the Circuit Court (R. 30-31) nor the Supreme Court of Florida (R. 37-41) passed upon any federal question. The opinion of the Supreme Court (R. 37-41) is completely silent on any federal question. No federal question was raised or passed upon anywhere in the State Court proceedings.

The petition for review on writ of certiorari does not contain a "statement particularly disclosing the basis upon which it is contended that this court has jurisdiction to review the judgment or decree in question," as is required by Supreme Court Rule 38(2). The petition makes no attempt to comply with the provisions of Supreme Court Rule 12(1), third paragraph, which requires that the jurisdictional statement "specify the stage in the proceeding in the court of first instance and in the appellate court, at which, and the manner in which, the federal questions sought to be reviewed were raised; the method of raising them (e. g., by a pleading, by request to charge and exceptions, by assignment of error); and the way in which they were passed upon by the court; * * *"

Question Presented

No federal question was raised or passed upon anywhere in the State Court proceedings. No federal question is presented here. We are therefore unable to state any federal question presented for determination.

Statement

This was a suit to quiet title to a 40-acre tract of submerged land in Biscayne Bay described as SW¼ of NW¼ of Section 4, Township 55 South, Range 41 East. The Trustees of the Internal Improvement Fund of the State of Florida were plaintiffs. A number of parties were named defendants, among whom were Charles R. Pierce and John M. Sutton, as Trustees of a dissolved Florida corporation. These gentlemen appear herein as petitioners and as attorneys for themselves as petitioners. The case was tried before a circuit judge for Dade County, Florida. The plaintiffs' evidence was documentary. None of it is included in the Transcript of Record filed in this Court. The defendants' only evidence to support their case was the testimony of Charles R. Pierce who appeared in the trial court both as attorney and witness for himself and Sutton. The Circuit judge did not write an opinion, but in his decree for the plaintiffs made findings which show the basis and soundness of his decision (R. 30-31). On appeal from the decree of the Circuit Court the Supreme Court affirmed. (R. 37-41).

The suit to quiet title grew out of the following set of facts:

The State of Florida, upon admission into the Union, became the owner of lands under inland navigable waters, i. e., sovereignty lands. Swamp and overflowed lands within the State of Florida were granted to the State under the Swamp & Overflowed Land Act (Sept. 28, 1850), and a patent dated December 4, 1896, issued to Florida conveyed, among other lands, the swamp and overflowed lands in the W½ of the NW¼ of Section 4, Township 55 South, Range 41 East. The high water mark of Biscayne Bay, an inland body of navigable water, divided the sovereignty lands from the swamp and overflowed lands in said W½

of NW¼. The State of Florida, in 1911, before there was any survey to determine what part of said W½ of NW¼ constituted sovereignty lands and what part constituted swamp and overflowed lands, conveyed the swamp and overflowed lands in said W½ of NW¼ to one Adam C. Richards, through whom the defendants in the lower court, petitioners here, claim. This suit only involved the S½ of said W½ of NW¼ and the State Court found and decreed, by quieting the title of the plaintiffs as against the claims of the defendants, that the entire S½ of said W½ of NW¼ was sovereignty land of the State of Florida.

The case was decided upon the rule of law which had already been announced by the Supreme Court of Florida, that where the State makes a conveyance of unsurveyed swamp and overflowed land of an estimated acreage bordering on the shores of inland navigable waters, i. e., sovereignty lands, it is the duty of the State to determine the boundary of the sovereignty land on which the sold swamp and overflowed land borders, and when such a determination is made by official survey, the line of demarcation so determined is conclusive and binding on all claimants under the swamp and overflowed land conveyance, unless impeached for fraud or mistake.

The evidence (not brought to this Court) showed that the United States, in 1922, and the State of Florida, in 1949, by official surveys, located and determined the boundaries between the sovereignty lands and the swamp and overflowed lands in said W½ of NW¼. The surveys were offered in evidence and show that the only swamp and overflowed land in the W½ of the NW¼ of said Section 4 was in the N½ thereof, and that the entire SW¼ of the NW¼ of said Section 4, which was the property involved in this suit, was sovereignty land of the State of Florida. The official surveys were received in evidence without

objection and were not impeached in any way. The case turned upon the construction of the deed from the State, the statutes of Florida, the surveys made of the property by the Federal Government and the State of Florida and the applicable common law of the State of Florida.

ARGUMENT

I

The Decision Below Is Clearly Correct

Respondents' title to the 40 acres in question is established by official United States and State of Florida surveys showing that said land lies below the mesne high water mark of Biscayne Bay, an inland body of navigable water, and is therefore sovereignty land of the State of Florida.

Petitioners' claim of title is based upon a 1911 State deed conveying unsurveyed swamp and overflowed lands in the W½ of the NW¼ of Section 4, Township 55 South, Range 41 East, Dade County, Florida. There are several points to be noted about the deed under which petitioners claim title to the land in question. (Neither the deed nor a copy of it is contained in the Transcript of Record.)

1. The W½ of NW¼ of said Section 4 was unsurveyed on date of deed.

2. The deed on its face shows it conveys swamp and overflowed land only.

3. The deed does not purport to convey all of the W½ of NW¼ of said Section 4, but only swamp and overflowed land situated in said W½ of NW¼. It was known that part of the W½ of NW¼ of said Section 4 was covered by the waters of Biscayne Bay, an inland body of navigable water.

4. There are 80 acres in the entire W½ of NW¼. The deed recited it conveyed an estimated 45 acres. However, it did not convey 45 acres of land, but con-

veyed only whatever swamp and overflowed land existed in the W½ of NW¼ of said Section 4, whether less or more than 45 acres.

Applicable and Controlling Principles of Law. When the State makes a conveyance of unsurveyed land, including unsurveyed land bordering on navigable waters, it becomes the duty of the State to survey the land and locate the boundaries thereof. *Martin* v. *Busch*, 93 Fla. 535, 112 So. 274. A complete and perfect title does not vest in the grantee of the unsurveyed land until the land has been identified and boundaries located by official survey. *Hardee* v. *Horton*, 90 Fla. 452, 108 So. 189. The official survey when made is conclusive and binding on all parties unless impeached for fraud or mistake. *Martin* v. *Busch*, 93 Fla. 535, 112 So. 274.

Petitioners do not deny that the official surveys show the land in question is situated below the mesne high water mark of Biscayne Bay. They do not attempt to impeach the official surveys for fraud or mistake. They cannot question the applicable and controlling principles of law stated above. The decision of the Supreme Court of Florida is, therefore, clearly correct. No new principle of law was announced by the Supreme Court of Florida by its decision in this case. The Court followed the case of *Martin* v. *Busch*, supra, which has been a part of the law of Florida ever since March 15, 1927. The decision and opinion in that case are particularly in point with this case in several respects. In *Martin* v. *Busch* the parties claiming under a State deed of unsurveyed swamp and overflowed land relied on a recital in the deed that a certain number of "estimated acres" of swamp and overflowed land were conveyed. Petitioners here are forced to rely on an identical recital. The official survey in *Martin* v. *Busch*, like the official surveys in this case, showed a less number of acres of swamp

and overflowed land than the "estimated acres" set forth in the State deed. The Supreme Court of Florida, in *Martin* v. *Busch*, held that such a recital could not and did not operate to extend the boundaries of the swamp and overflowed land to include land below the high water mark of navigable water as shown by the official survey. The decision in *Martin* v. *Busch* has been the unquestioned law of Florida for 24 years, and is applicable here.

Another fact demonstrates that the decision of the Supreme Court of Florida is clearly correct. In 1911, when the Trustees of the Internal Improvement Fund of the State of Florida conveyed swamp and overflowed land to petitioners' predecesssor in title, the Trustees had no authority to convey sovereignty land. The Trustees were first empowered to convey sovereignty land by Chapter 7304, Laws of Florida, Acts of 1917.

Paragraph B of petitioners' answer filed in the State Court alleged that the land involved in the suit was owned by the United States, and the United States should, therefore, have been made a party to the suit (R. 13). Paragraph D (R. 16) of such answer alleged that persons who claimed title to lands in the NW¼ of the NW¼ of Section 4, Township 55 South, Range 41 East, under the 1911 State deed to swamp and overflowed lands (being the same deed under which petitioners claimed) would be affected by the decision in the suit, and they should also have been made parties to the suit. These allegations were stricken on motion of respondents (R. 22). On appeal to the Supreme Court of Florida, petitioners' second assignment of error was that the Court erred in granting the motion to strike (R. 33). This assignment of error will not be considered in this Court because it was abandoned by failure of petitioners to argue it in brief filed in the Supreme Court of Florida. *Piowaty* v. *Regional Agr. Credit Corp. of Wash-*

ington, D. C. — Fla. —, 34 So. 2d 94; *McCook* v. *Caruthers*, 87 Fla. 238, 99 So. 559; *Hulbert* v. *Chicago*, 202 U. S. 275.

The contention that the portions of the answer should not have been stricken is also without merit because it is well established that a quiet title suit may not be defeated by showing that the plaintiff's title, otherwise sufficient to support the suit, is subject to possibly superior rights in third parties not parties to the suit. *United States* v. *State of Oregon*, 295 U. S. 1. The Circuit Court for Dade County, Florida, found that the land in question is sovereignty land of the State of Florida and this was affirmed on appeal by the Supreme Court of Florida. It is elementary that such finding and decision are not binding upon the United States which was not a party to the suit. As a matter of fact, the land in question is a part of Biscayne Bay, an inland body of navigable water, and there is no issue or dispute about its being sovereignty land of the State of Florida. Petitioners completely failed to establish any title to the area in question. They had nothing to gain by alleging title in a third party.

II

There Is No Important Question of Federal Law

It affirmatively appears from the record that the only question involved in this suit was whether any party named a defendant had any claim of ownership to or lien upon the SW¼ of the NW¼ of said Section 4. It being undisputed that the deed from the State to the defendants' predecessor in title conveyed only swamp and overflowed lands and that the State still owned the sovereignty lands, the answer depended upon the determination of the boundaries between the two classes of lands. The surveys showed all the land involved in the suit to be sovereignty lands. By no stretch

of the imagination can such a question of local law be converted into a federal question, much less be of sufficient importance to warrant review by this Court on certiorari.

Conclusion

The petition for writ of certiorari to the Supreme Court of Florida to review the decision in this case should be denied for each of the following reasons:

1. There is no federal question presented.
2. The decision of the Supreme Court of Florida is clearly correct.
3. The issues involved in this case are local and are not of sufficient importance to justify the issuance of a writ of certiorari by the Supreme Court of the United States.

Respectfully submitted,

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